IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

AIMEE BEVAN, as Personal Representative of the Estate of Desiree Gonzales, deceased,

Plaintiff,

vs. NO: 1:15-CV-00073-KG-SCY

SANTA FE COUNTY, MARK GALLEGOS, Deputy Warden/Acting Youth Development Administrator, in his official and individual capacities, GABRIEL VALENCIA, Youth Development Administrator, Individually, MATTHEW EDMUNDS, Corrections Officer, Individually, JOHN ORTEGA, Corrections Officer, MOLLY ARCHULETA, Corrections Nurse, Individually, ST. VINCENT HOSPITAL and NATHAN PAUL UNKEFER, M.D.,

Defendants.

VIDEOTAPED DEPOSITION OF NATHAN PAUL UNKEFER, M.D.

June 18, 2015
9:00 a.m.
119 East Marcy
Santa Fe, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, this deposition was:

TAKEN BY: MR. LEE R. HUNT
Attorney For Plaintiff

REPORTED BY: Arlette McClain, CCR #85
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EXHIBIT
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Page 18

MR. TAYLOR: Join.
A. What did they do about it? And how come it is almost 2:00 in the morning before she's back in the emergency room?
Q. When you learned that the jail understood that she was gasping for air, and having difficulty breathing, from your position, did you believe that was a person that needed medical attention?
MS. SAFARIK: Form.
MR. TAYLOR: Join.
A. I mean, I wasn't there, but if the question is, somebody is gasping for air and having difficulty breathing, then, yes, that's somebody who needs medical attention.
Q. And in particular a person who, as in Desiree's situation, that earlier in the evening had had an acute overdose of heroin, had initially been found not breathing, had been revived with Narcan, had been treated in the hospital, and then discharged, so this is a patient with a history, not just somebody who is found gasping for air, correct?
A. Correct.
Q. And given that history, the person who had an overdose, had been brought back around with Narcan and who then, several hours later was found gasping

Page 19

for air and having difficulty breathing, that's a person that needed medical treatment, didn't they?
MS. SAFARIK: Form.
MR. TAYLOR: Join.
A. It is a person who needed medical treatment. The question of how that is tied in to the earlier overdose is still the question of the day, right.
Q. Well, maybe; maybe not. It's a question, and it wasn't my question for what I'm asking you right now.
The question I'm asking you right now is given the context of Desiree Gonzales, meaning what had occurred beginning at 7:30 p.m., all of the way on through until 11:00 p.m., if we use the 11:00 p.m. time as written by Dr. Best. For Desiree Gonzales, when it was noted at 11:00 p.m. that she was having difficulty breathing, was gasping for air, and would stop breathing and then have a gasping respiration, at that time she needed medical care, didn't she?
A. She did.
Q. And we talked to Dr. Prock, and -- meaning we took a deposition of Dr. Prock. And do you know Dr. Prock?
A. I do.

Page 20

Q. She was the intensive care doctor who took care of Desiree the second ER visit?
A. Correct.
Q. Have you ever spoken to her about Desiree's care?
MR. TAYLOR: Form.
A. No.
Q. One of the things that we talked to Dr. Prock about was, had Desiree Gonzales been brought back to the emergency room, or been brought back to the hospital around 11:00 p.m., or around the time when she was initially found at the county to have gasping respiration, difficulty breathing, and there's also a note that she was making gurgling noises -- had she been brought back to the hospital at that time, it is most likely that treatment would have been available and would have prevented her from dying at that time.
And based upon your knowledge of the treatment of either drug overdose, pulmonary edema, and your treatment of Desiree Gonzales, had she been brought back to the hospital when it was initially found at the county that she was having the difficulty breathing, including gasping and gurgling noises, is it most likely that treatment would have

Page 21

been available and that she would have survived this event?
MR. KOMER: Object to form.
MS. SAFARIK: Form.
MR. TAYLOR: Join.
A. It is most likely.
Q. And let's talk about that for just a minute. In your practice, since 2007, you've treated many heroin overdose patients, haven't you?
A. Yes.
Q. And we asked -- Anne Marie Munger was one of the other folks we took a deposition, and we asked her to estimate on a weekly or monthly basis how many drug overdose patients she sees, and the number was quite high.
And so I don't even recall what it is, but a better question would be, for you, on a given week, do you -- is it typical for you to treat a heroin overdose patient at least weekly?
A. If we're just asking heroin use or overuse, probably daily. If we're asking true overdoses needing Narcan reversal, maybe once a week, probably not quite that frequent. Definitely once a month.
Q. And overdose from heroin is a condition that in the emergency room you have tools that you

Page 82

every time you look at the monitor bank there are vitals going on, and so I'm constantly looking at them to make sure they're normal. There's one spot check right there that's normal, too.

Q. And would you agree that based on the vitals that are recorded, the set that's listed on, if we go to the vitals page, the 2148 set of vitals is -- are the only set of vitals that are all normal?

A. They are the only set that are in the reference range but, again, it's context.

Q. Well, I'm just -- you would agree that based on what we're looking at, the vitals page, the only time the pulse was within the normal reference range, was at 2148?

A. This is so -- it's difficult to answer, because similar to the glucose question, where if you just are a computer looking at a number, you go, that glucose is high, but it's not actually out of quote, unquote, normal for what's happening.

Q. My question was the reference range, not context. Do you agree that the only time the pulse was within the normal reference range was the 2148 set of recorded vitals?

A. Yes.

Q. Now, you prescribed medications for Desiree

Page 83

Gonzales; is that right?

A. I did.

Q. And you prescribed Ativan and Zofran; is that right?

A. Correct.

Q. And in your practice within the emergency room, is it often that you're the person that enters the orders into the system?

A. Yes, often.

Q. And I don't know --

A. Can I give a caveat to that? The nurses can take verbal orders, and so they can enter the order in and I can later sign off on it.

Q. And looking at -- I think this is in the records, and maybe we'll pull it in a minute. It's pages 48 of 53. This is the order sheet that includes the Ativan and the Zofran. Under there, I guess they have -- let's, actually, look at page 49. And looking at that page, if we just focus on the Ativan for a minute. At the bottom of that section it says "Action type, order," and then it lists you as the action personnel; do you see that?

A. I do.

Q. And it lists a time of 2040; is that right?

A. Correct.

Page 84

Q. And so based upon the order as it's presented in this page, would it be your understanding that you entered the order for Ativan at 2040, and then also entered the order for Zofran at 2040?

MR. TAYLOR: Form.

MS. SAFARIK: Join.

A. Whether it was actually me putting it in the computer or whether it was a verbal order under my name that I later checked off on, I don't remember.

Q. And either way, I guess what occurred was that the orders for Ativan and Zofran were made at 2040, however it was entered?

MS. SAFARIK: Form.

MR. TAYLOR: Join.

Q. Is that right?

A. Yes.

Q. And the reason for prescribing Zofran was what?

A. She was vomiting, and gagging.

Q. And what was the reason for prescribing Ativan?

A. Because she was agitated.

Q. Did you talk with Desiree about giving her

Page 85

Ativan?

A. I don't remember. I typically would say something to the effect of, Let's give you some medication to help you relax.

Q. Whether or not you had that conversation with Desiree -- as we sit here now, do you remember having that conversation, first of all?

A. I may have -- I don't remember the specifics. I remember she wasn't saying much to me.

Q. When you're dealing with a minor -- and you understood Desiree was a minor; is that right?

A. Yes.

Q. When you're dealing with a minor, it's still your obligation as a physician to inform them of the types of treatment that you're providing, isn't it?

A. There are exceptions, but, yes.

Q. And in -- often when you're treating a minor, the conversations about the types of treatments that you're providing occur with their guardian or their parent; is that true?

A. If they're available.

Q. And when a minor's guardian or parent is not available, and they're a minor who is, say, upper teenage range, is it typical for you to have

Page 134

their breathing. And for 30 minutes you say, great, you have not re-overdosed. You do not have a respiratory problem. Two hours and a half, three hours, three and a half, is not going to change that. The Narcan isn't part of the equation at all at the two-hour mark.

Q. Are you now saying that you didn't cut it close?

MS. SAFARIK: Form.

MR. TAYLOR: Join.

A. I'm saying that using the term "cutting it close," while true, it was quite close to my, what I think is appropriate, my two-hour mark, I feel like it's -- that terminology is being used to try to suggest that I was taking a risk.

So instead of saying cutting it close, we could say, you kept her past the appropriate time. Yes, I did. It means the same thing, sounds much different. Cutting it close, while true, is not what I did in the sense I didn't take a risk by doing so.

Q. Well, you did say in your testimony that you cut it close, right?

A. I did cut it close.

Q. And we're not changing that today, right?

A. But you --

Page 135

MS. SAFARIK: Form.

A. I think you understand, and I understand what you're saying. I did cut it close, technically. I did not cut is close by taking a risk.

Q. In retrospect, do you think you cut it too close?

A. No, sir.

Q. I think we covered in the testimony this morning about individuals who would be checking on Ms. Gonzales at the YDP, and you didn't -- weren't aware what their background would be, but that they would be checked at some interval; is that right?

A. Correct.

Q. And where did you gain that information?

A. I believe it was the police officer that was waiting with the patient.

Q. And tell me about that conversation, to the best of your recollection?

A. Again, the specifics of the conversation -- if I start trying to say, I said this. She said this. It would just be me anticipating what it was, without -- I don't remember.

Q. I don't want you to speculate or reconstruct. Tell me to the best of your recollection.

Page 136

A. I know I asked whether she was in custody, and if she was going with the officers, and they said, "Yes."

And I said, "When she goes, is she watched or observed?"

And they said she is checked on every 15 minutes.

Q. And did you know what the nature of the checks would be?

A. No. But I knew they didn't need to be very medical. Meaning I didn't need somebody to do a psychological assessment, or even check her vital signs. I needed somebody to make sure she was breathing and not overdosed.

Q. And when you discharged her, did you have any understanding as to whether the facility she was going to end up at had some ability to intervene in any way if she developed problems?

MS. SAFARIK: Form.

MR. TAYLOR: Join.

A. I knew that the intervention needed to be nothing more than calling 9-1-1, so, yes, I knew they would be able to.

Q. So if a 9-1-1 call is going to be placed, then you're thinking someone from outside the

Page 137

facility will have to come and respond if there's a problem later, right?

A. The problems that I anticipated were not problems that happen immediately. So I knew that there should be time for an outside ambulance to get there.

Q. But there would certainly be some gap in time, between the outside agency responding to the detention facility, and their receiving the call, right?

MS. SAFARIK: Form.

MR. TAYLOR: Join.

A. Yes, and that is okay with me. I send patients like this home with their parents and say, if they start to look like they're not breathing, call 9-1-1, and that's appropriate.

Q. One of the benefits to keeping a patient in a medical facility is that they can be watched by trained medical providers, correct?

A. Correct.

Q. And one of the benefits of keeping a patient in a medical facility is that the medical facility can provide immediate emergent response, should a problem arise that's life threatening, correct?

Page 150

Our shifts try to follow a circadian sort of rhythm, so if we work an evening shift, the next day is either evening or night. You go forward in time. You would never go evening to day. So it would either be the same shift, or later.

Q. And so we can discern from your testimony that you spoke to no one later on the 7th or on the morning of the 8th about Ms. Gonzales, when she returned to the ER?

A. Correct. I did not learn about what happened until I came back to work the next day.

Q. Below your writing -- I was just curious about this -- it says "referred to" -- do you see that section?

A. Yup.

Q. And I think that's "PCP." I don't know what that is?

A. Primary care physician. There's one of the preselected choices on the discharge instructions that says, follow up with your primary care provider as recommended or something. And I think the scribe just took that, and put it onto this.

Q. And then below that it says, "Counseled patients regarding diagnosis and need for follow up." What did you tell her?

Page 151

A. I don't remember the specific conversation, but it would be something to the extent of, Hey, do you still feel okay? You breathing all right? Let me take a quick listen to your lungs. And then, All right. It looks like -- this is my typical line, It looks like you have bigger things to deal with than me right now, but at this point you're safe. You haven't re-overdosed, and you're going to be discharged into custody.

Q. Can you go back to Exhibit 3, please. What is your understanding of the purpose of this form?

MR. TAYLOR: Form.

MS. SAFARIK: Join.

A. It is to give the personnel at the correctional facility a quick overview of the patient's emergency room visit.

Q. And down -- further down you've written for recommended treatments, medication, "No further cares." Did I read that right?

A. Yes.

Q. What did you expect a layperson receiving this form to take from that notation?

A. That there was no more treatment or medication that was needed.

Q. Why did you use the word "cares"?

Page 152

A. I don't know. Because I covered treatments and medications. It's easier than writing "no further treatments or medications." I could have wrote "no further needs."

Q. A layperson reading that form would think there were no further cares for this patient, right?

MR. TAYLOR: Form.

MS. SAFARIK: Join.

A. Well, they would think that there is no treatments. She doesn't need bandages changed, or whatever, treatments and/or medication. She doesn't have a prescription for antibiotics or anything else.

Q. No need for medical intervention?

MR. TAYLOR: Form and foundation.

MS. SAFARIK: Join.

Q. Right?

A. No. No. No. In terms of the overdose that happened at 7:44, whatever -- when she got the Narcan, there was no further care necessary. This does not suggest that if something new happens, don't worry about it. If she fell and broke her leg, nobody is going to be like, Dr. Unkefer said don't do anything about it. If she threw up blood, whatever. So when she stops breathing well, it is completely inappropriate to suggest that I recommended not doing

Page 153

anything about that.

Q. Do you believe, as you sit here today, that her problems with breathing are the result of her original heroin overdose?

A. No.

Q. What do you believe?

MR. TAYLOR: Form.

MS. SAFARIK: Join.

A. I believe that the Narcan wore off. I had 30-plus minutes to see whether she was going to re-overdose. She did not. Not only did she not, I even gave her Ativan, which would have made it even more pronounced of an overdose. It didn't happen. She had gotten past that initial overdose.

There's -- it is impossible for someone to be so overdosed that they nearly die, recover from that, I'm great. I'm going to walk out of here talking to everyone like nothing's wrong. And then that same heroin from the initial overdose to kick in again so strong that she dies from it.

Q. That's impossible?

A. It is impossible.

Q. So what's your explanation?

A. Now, it can look that way quickly because of Narcan covering up the opiates. In fact, that is